

MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

February 14, 2006

Present

HJ: Henry Jungmann, Chairperson

RS: Robert Sherburne, Vice Chair

FZ: Frank Zarba

JK: Jeff Kablik

LG: Lucy Gertz

CH: Cynthia Hanna

LC: Lori Capone, Director

GC: Gloria Clancy, Clerk

Absent

JZ: Jeanne Zarba

BL: Brian Logue, Associate Member

7:00 Meeting opened by Henry Jungmann, Chairperson

7:02 Whispering Pines Estates – 39 Lakeview Avenue – Notice of Intent: (Map 25, Parcel 13) (Continued from 11/8/05, 12/13/05 & 1/10/06) Proposed residential townhouses, roadway, roadway crossing of an intermittent stream, drainage, grading, and associated utilities within the buffer zone. Also, removal of existing septic system, associated grading and construction of a water pump station within the buffer zone. LC told the members that Mr. Cricones has requested a continuance as his engineer is still working on a response to Holmberg & Howe comment letter, dated February 2, 2006, and on the Replication status.

FZ: Motion to continue the hearing for Whispering Pines Estates to March 14, 2006 at 7:10 P.M.

CH: 2nd.

Unanimous (6-0)

Other Business:

❖ Draft of Conservation's Town Report: No changes made. LC will submit it.

❖ **Vesper Country Club** will be applying to Department of Fish & Wildlife for a *Migratory Bird Depredation Permit*. The Canada Geese have become a real nuisance. They plan to use vegetable oil on the eggs in 20 nests to prevent the eggs from hatching. They will also request permission to shoot the maximum allowed (20 per year/4 per day). HJ said that it really is a Fish & Wildlife issue. LC recommended they file a Request for Determination of Applicability to ensure the project will not have a negative impact on the resource area or the Riverbank. She said they would probably want to begin in April. HJ asked LG to check with the Audubon Society for their recommendations or preferred methods of dealing with these nuisance geese. He also told LC to make sure Vesper notifies the Police and the Board of Selectmen prior to any shooting.

❖ **Director Determination** for Joan Trudell – **79 Mascuppic Trail** – permission to remove one white pine located 10 feet from Lake Mascuppic. The tree will be removed in sections using a crane. The stump shall remain and no debris shall be allowed to fall into the lake.

JK: Motion to approve the Director Determination for 79 Mascuppic Trail.

RS: 2nd.

Unanimous (6-0)

❖ **Director Determination** for Joan Levasseur – **10 Jamie Way** – permission to level out playground area with a bobcat. LC said the land slopes gently towards the wetland. Total disturbance would be about 256 square feet with the closest point 80 feet from the wetland. LC will suggest hay bales or silt fencing until the grading is finished. JK suggested they slope it slightly away from the wetland.

JK: Motion to approve the Director Determination for 10 Jamie Way with the stipulation that the area be graded slightly away from the resource area so there is no potential for erosion in the wetlands resource area.

FZ: 2nd.

Unanimous (6-0)

7:15 Linette Rivera – Lot 12 River Bend Road – Notice of Intent: (Map 20B, Parcel 29, Lot 12) (Continued from 12/13/05 & 1/10/06) Clear 56' x 12' area for driveway/parking and place 6" or less of pervious crushed stone, clear path to dock area, storage of dock, placement of picnic table and storage container, cut invasive plants, spot treat poison ivy with Ortho Poison Ivy Killer. All work within riverfront area. Some activities located within floodplain. HJ said we still have no *opinion* from Town Counsel on the legal issues. LC said that at the last meeting there was a question as to whether or not the application meets the performance standards set forth in the WPA for the Riverfront Area. LC requested a letter from the applicant to that affect. HJ asked for abutter comments. There were none.

FZ: Motion to continue this hearing to February 28, 2006 at 7:20 P.M.

LG: 2nd.

Unanimous (6-0)

Other Business:

❖ **Director Determination for Division of Fisheries & Wildlife – for work on the Upper Flint Pond Dam.** The need for repairs came to a head October 15, 2005 after several days of rain. The Towns' Fire and Highway departments took action to prevent erosion of the dam due to rising water levels from a recent breach of the dam. Further preventive measures had to be taken on October 20, 2005 to lower the pond in anticipation of more heavy rains. This dam is listed on the National Dam Inventory as a "Significant Hazard Dam" and both upper and lower dams are in need of repair. Per letter from Patricia Huckery, Northeast District Manager of the Division of Fisheries and Wildlife, dated February 9, 2006, the work would entail removal of about 20 trees ranging from 2" to 14" and about chest high. Shrubs will not be removed. A large stone will be placed to fill an existing gap in the wall and river stone will be placed in the washout. Crack in the spillway walls will be filled with epoxy to plug the gaps and stop further interior water and ice damage. A crane will be operated off the paved boat ramp. They plan to have the work completed by the first week of March by Community Tree Service of Chelmsford.

FZ: Motion to approve the Director Determination for work on the Upper Flint Pond Dam as per letter dated 2/9/06 from Div. of Fisheries & Wildlife.

JK: 2nd.

Unanimous (6-0)

❖ LC referred to a copy of a letter from the Building/Zoning Commissioner dated 2/10/06 regarding *Request for Comments* from other boards. The procedure in the past has been that other boards would make comments and recommendations and turn them back in to the Board that requested them. This letter seemed to be chastising LC for making recommendations. It seems that the Building Commissioner misunderstood the recommendations as request for him to uphold **our** rules & regulations. LC said read a response that she has written in hopes that he does not change the process of asking for input from other boards. Up until this point the process has worked well. The members agreed and asked her to add that by working *together* we all benefit, especially the applicant.

❖ Update on the **proposed cell tower at 50 Coburn Road.** The Zoning Board Meeting is on 3/9/06 at 6:30 P.M. As the Sherburne Property is an abutter to the project, some of our Commission to try to attend the meeting. There was discussion.

7:30 Digital Federal Credit Union – 378 Middlesex Road – Notice of Intent: (Map 12, Parcel 42) (Continued 1/10/06) Construction of a one-story 4,722 square foot building with associated parking and site improvements. The site will have access points on Locust Avenue and Middlesex Road. Work will be performed within Riverfront Area, floodplain, and buffer zone of Locust Brook. The applicant is still working with the Planning Board. They are also still working on revisions per comments from our consultant's review. We are in a *Catch 22* situation here with the second access from Locust Street. Planning Board requires it, and we are not supposed to allow it because the project will then exceed the 10% alteration limit. LC will speak to someone at DEP about our alternatives.

JK: Motion to continue this hearing to February 28, 2006 at 7:20 P.M.

LG: 2nd.

Unanimous (6-0)

Other Business:

- ❖ Bob Clohesy – Pawtucket Boulevard - wants to put in approximately 50-100 linear feet of riprap on the riverbank. He doesn't want to file. HJ said he most definitely would have to file an NOI.
- ❖ Update on the **Enforcement Order** – Westford Road – School Department/Elementary School Building Committee. (*Jeff Kablik removed himself from this discussion.*) LC showed the engineering plan for proposed work. There will be two alternating layers of compact clay & silt fencing and then rip rap, for stabilization of overflow area. LC said he put up silt fencing last week and removed some alders and small growth. This work is basically restorative, emergency measures for now. He plans on filing an NOI in the future for more culverts under the roadway. HJ requested the plan be reviewed by Holmberg & Howe.

7:45 R & F Landholding LLC – Whitetail Estates – Off of Althea Drive. – Notice of Intent: (Map 33, Parcel 20) Construction of a roadway, drainage system, and two single-family dwellings with septic systems. Work on the roadway, utilities and one driveway is proposed in the buffer zone.

JK: Motion to waive the reading of the Legal Ad.

CH: 2nd.

Unanimous (6-0).

JK: Motion to waive the reading of the Abutters List.

CH: 2nd.

Unanimous (6-0).

Mike Turgeon of Turgeon Environmental Services represented the applicant. LC noted that the abutter list denoted abutters in Dracut. Mr. Turgeon pointed out on the plan that it is only the State Forest. HJ said he could proceed. Wetlands on site include bordering vegetated wetland and isolated land subject to flooding. There is also floodplain located across Althea Avenue. Two driveways and two houses will be outside the buffer zone. The roadway will be outside the 50' line. They will utilize roof infiltration and dry wells. LC has walked the site and noted some missing flags. The applicant is still working with the Planning Board. There was discussion of an isolated wetland subject to flooding. Mr. Turgeon said there is no buffer zone to that per State Regulations. JK asked about the floodplain of Lake Althea and asked how the performance standards are being met regarding WPA and ByLaw setbacks. After more discussion HJ opened up the discussion to abutters. *Brenda Fells* - 39 Althea Avenue - pointed out her property on the plan and asked many questions about how the wetlands were delineated. She insisted that the area is very wet and feels the plan does not reflect all wetlands. She also told the Commission that she has written to Natural Heritage regarding endangered species that she claims to have seen in the area. She will file a request for a study. *Mr. Vurgaropoulos* – 5 Trotting Park Road -

spoke of concern for the wells in the area. He claims they are not the best as it is, and adding more septic systems is only going to make it worse. *Rich Mellen* – 14 Trotting Park Road – asked questions regarding riprap and the 16” culvert. HJ said that with so many concerned abutters, he feels we should have the plans reviewed. LC said that Ross Associates is reviewing for the Planning Board. HJ wants Holmberg and Howe. LC questioned their proposed silt barrier at the outlet. HJ said he would prefer siltation control to LC’s satisfaction. Mr. Turgeon said if she prefers regular hay bales and silt fencing he will revise the plan to show that.

JK: Motion to set up a 53G account with \$3000.00 to be collected from the applicant and to have Holmberg & Howe review the plans for the Conservation Commission.

FZ: 2nd.

Unanimous (6-0).

FZ: Motion to continue this hearing to March 14, 2006 at 7:20 P.M.

JK: 2nd.

Unanimous (6-0)

7:45 (8:46) Eric Gardner – 72 Progress Avenue – Notice of Intent: (Map 13, Parcel 46) (Continued from 10/25/05, 11/8/05, 12/13/05, 1/10 & 1/24/06) Proposed construction of a commercial building, bituminous pavement, landscaping, grading and associated utilities within the 100 ft buffer zone. Proposed filling of local jurisdictional wetland. We have a request to continue to address engineer concerns.

CH: Motion to continue this hearing to February 28, 2006 at 7:25 P.M.

LG: 2nd.

Unanimous (6-0)

8:00 (8:47) Merrimack Landing Realty Trust – 91 & 95 Middlesex Road – Notice of Intent: (Map 27, Parcel 2, Lot 0 & 1) (Continued from 11/8/05, 12/13/05, 1/10 & 1/24/06) Construction of twenty-two, eight unit townhouse style condominiums and apartment buildings, a twenty-four foot wide access drive, parking areas, associated grading, subsurface utilities and associated landscaping, a portion of which is located within 100 feet to a resource area and within the 100 year flood plain. We have a request to continue to address engineering concerns.

FZ: Motion to continue this hearing to February 28, 2006 at 7:25 P.M.

CH: 2nd.

Unanimous (6-0)

Other Business:

- ❖ Upcoming MACC Conference – so far only HJ and RS have signed up to go.
- ❖ Selectmen will hold budget sessions February 22 beginning at 6:00 P.M. Members are invited to attend.
- ❖ Tyngsboro Partners LLC – (JK excused himself from this discussion) They have submitted a plan for the Post ‘n Rail fencing that we requested, even though it was not a requirement of DEP’s Superceding OOC. HJ said to get a signed agreement because the Appeal under the ByLaw is still pending.
- ❖ Complaint of stockpiled horse manure in the wetland at 10 Jefferson Drive. LC inspected and found that it was next to but not in the wetland. She told the owner, Mary Calandrella to move it. Mary will be filing an “after the fact” RDA for a temporary small pony corral.

Minutes 2/14/06 continued

LG: Motion to approve the minutes of January 10, 2006.

FZ: 2nd.

Unanimous (6-0).

FZ: Motion to approve the minutes of January 24, 2006.

RS: 2nd.

Unanimous (6-0).

FZ: Motion to adjourn.

JK: 2nd.

Unanimous (6-0).

Meeting adjourned at 9:00 P.M.

Respectfully submitted by Gloria Clancy, Conservation Clerk